

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

RECEIVED

OFFICE OF  
MANAGING DIRECTOR

August 9, 1996

AUG - 9 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

[REDACTED]

Charles H. Helein  
General Counsel  
America's Carriers Telecommunication Association  
8180 Greensboro Drive, Suite 700  
McLean, Virginia 22102

Re: CC Docket No. 96-98

Dear Mr. Helein:

This is in response to your letter dated July 30, 1996 to William E. Kennard, General Counsel. Your letter was forwarded to the Office of Managing Director in light of our operating responsibility regarding the Commission's ex parte rules. See 47 C.F.R. § 0.13(a)(9). See also 47 C.F.R. § 1.1212.

In your July 30, 1996 letter, you request acceptance of a letter concerning Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, which was dated July 29, 1996, addressed to the Honorable Reed E. Hundt, Chairman, and received after the commencement of the Sunshine Agenda period, 47 C.F.R. § 1.1203. Your request for acceptance of the July 29, 1996 letter is denied pursuant to 47 C.F.R. § 1.1203(a), which prohibits the making of any presentation to decision-making personnel concerning matters listed on a Sunshine Agenda. Your letter did not provide a sufficient basis for deviating from, or waiving, that rule.

Because the text of the Commission's action concerning CC Docket No. 96-98, FCC 96-325, was released on August 8, 1996 and the Sunshine Agenda period prohibition has expired, 47 C.F.R. § 1.1202(f), I am now forwarding to Chairman Hundt and the other Commissioners the original copies of your July 29, 1996 letter, which heretofore have not been considered by any decision-making personnel. Furthermore, a copy of your July 29, 1996 letter will be placed in the record of CC Docket No. 96-98 so that it may be considered as an informal petition for reconsideration of the Commission's action in the proceeding.

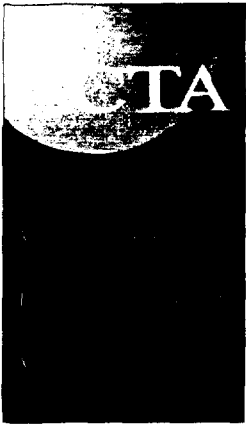
Sincerely,



Andrew S. Fishel  
Managing Director

cc: Chairman and Commissioners

No. of Copies rec'd \_\_\_\_\_  
List ABCDE \_\_\_\_\_



Jul 30 2 07 PM '96

July 30, 1996

**Via Hand Delivery**

William E. Kennard, General Counsel  
Office of General Counsel  
Federal Communications Commission  
1919 M Street, N.W.  
Room 614  
Washington, D.C. 20554

***Re: NTIA's Eleventh Hour Contact on the Implementation of the Local  
Competition Provisions in the Telecommunications Act of 1996  
CC Docket No. 96-98***

Dear Mr. Kennard:

We have been informed that at noon yesterday, July 29, 1996, in the above-referenced docket, the Commission entered the "sunshine" period. We are, therefore, submitting the original copy of a letter to Chairman Hundt to your office with the following observations.

First, because the content of the letter addresses procedures, and not substance, we do not believe it is affected by the "sunshine" period. Further, because we believe that what the Commission intends to do is in violation of the notice and comment period required by law, any action is unlawful and the "sunshine" period would not, therefore, be applicable.

In the event your office does not agree with these observations, we request that the letter be held and delivered to the Chairman, with copies to the Commissioners, after final action on the agenda item.

If there should be any questions, kindly contact the undersigned.

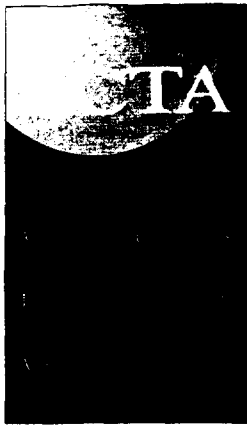
Respectfully submitted,

A handwritten signature in cursive script, reading "Charles H. Helein", is written over the typed name.

Charles H. Helein  
General Counsel

950 South Winter Park Drive, Suite 325 Casselberry, Florida 32707  
Phone: 407-332-9382 or 800-881-ACTA(2282) Fax: 407-332-9780 E-Mail: actanet1@intellistar.net

8180 Greensboro Drive, Suite 700 McLean, Virginia 22102  
Phone: 703-714-1332 Fax: 703-714-1330 E-Mail: actanet1@intellistar.net



July 29, 1996

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

***Re: NTIA's Eleventh Hour Contact on the Implementation of the Local  
Competition Provisions in the Telecommunications Act of 1996  
CC Docket No. 96-98***

Dear Chairman Hundt:

This will address the recent letter of Larry Irving dated this date concerning the NTIA's proposal that the Commission adopt a "transition charge" designed to recover those portion of access charges that fund universal service programs." This "transition charge" would be added to the relevant costs charged by incumbent LECs for unbundled network elements purchased by IXC's in order to originate and terminate long distance service.

As General Counsel for America's Carriers Telecommunication Association ("ACTA"), the lack of elementary fairness involved with this eleventh hour communique on a matter of grave concern to all competitive IXC's cannot go unchallenged. What is particularly disturbing is not only has the Commission apparently embarked on adopting a formula affecting how unbundled network elements will now be priced without complying with the notice and comment procedures required by law, but has been encouraged to do so by a sister agency after all other comments from interested parties has been truncated by application of the "Sunshine" laws.

Further compounding the problem, the suggestion ignores critical facts and problems that could have been debated and considered if proper notice and comment procedures had been followed, as required by law. The most critical of these facts is that the Commission has outstanding inquiries on the universal service funding mechanism in which it has been documented that the present universal service funding mechanism is fraught with abuses which have made it a bloated "pork barrel" for the monopoly ILECs. Now, as is understood, the Commission is to give official sanction to allowing this bloated and abusive mechanism to be passed on as an additional charge for unbundled network elements.

950 South Winter Park Drive, Suite 325 Casselberry, Florida 32707  
Phone: 407-332-9382 or 800-881-ACTA(2282) Fax: 407-332-9780 E-Mail: [actanet1@intellistar.net](mailto:actanet1@intellistar.net)

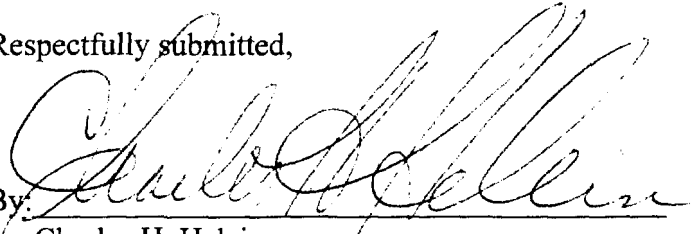
8180 Greensboro Drive, Suite 700 McLean, Virginia 22102  
Phone: 703-714-1332 Fax: 703-714-1330 E-Mail: [actanet1@intellistar.net](mailto:actanet1@intellistar.net)

The Honorable Reed E. Hundt  
 July 29, 1996  
 Page 2

All the more upsetting is the fact that this last minute undertaking will be carried out without so much as the usual lip service to the need for an analysis required by the Regulatory Flexibility Act. The impact on small carriers will, once again, be ignored in the name of providing even more government-sponsored subsidies to the most entrenched monopolists in the telecommunications industry.

While it may be understood that this situation will be defended as having arisen due in part to the severely limited timeframe accorded the Commission to put in place regulations to comply with the 1996 Act, that excuse portends little hope that the Commission will achieve its goals of creating a competitive marketplace. Once again, in place of fact finding, actual numbers on costs and cost allocations, analysis thereof and open debate, the Commission has allowed the self-interests of powerful parties to gain competitive and economic advantage behind the smoke screen of protecting "universal service."

Respectfully submitted,

By:   
 Charles H. Helein,  
 General Counsel

cc: James H. Quello, Commissioner  
 Rachelle B. Chong, Commissioner  
 Susan Ness, Commissioner  
 Larry Irving, NTIA  
 ACTA Board